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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:) Case No. BKS-09-15101-BAM
Devin and Particia Fulton,) Chapter 13
)
) Hearing Date: OST REQUESTED
) Hearing Time: OST REQUESTED
)
)
Debtor(s).)
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**MOTION TO DETERMINE US NATIONAL BANK'S VIOLATIONS FOR
CONTEMPT OF COURT PURSUANT TO 11 U.S.C. SECTION 105 AND FRBP
9011 AND REQUEST FOR PUNITVE DAMAGES, ATTORNEY'S FEES AND
SANCTIONS**

COMES now the above named Debtor, by and through attorneys, Haines & Krieger, L.L.C., and hereby moves this Honorable Court for an Order awarding sanctions, punitive damages and attorney's fees to the debtor for U.S. National Bank (hereinafter "Creditor")'s contempt of a Court Order entered September 17, 2009. This motion is based on the attached affidavits and Points and Authorities below.

POINTS AND AUTHORITIES

STATEMENT OF FACTS

1. On or about April 05, 2009, the debtor filed the instant chapter 13 bankruptcy, bearing docket number 09-15101.

2. On or about July 15, 2009, Creditor filed for relief from stay to resume foreclosure on debtor's property located at 4379 Sun Vista Drive, Las Vegas, Nevada 89104.
3. On or about August 10, 2009, Debtor filed opposition to Creditor's relief from stay.
4. On August 11, 2009 at 1:30 PM hearing was held on Creditor's motion for relief. Debtor agreed not to prosecute opposition to Creditor's motion if Creditor agreed to renoteice the Notice of Default as required under revised NRS 107 (as amended though Nevada Assemble Bill 149). In essence this compromise required Creditor to provide debtor with an opportunity to elect to mediate through Nevada's mediation program with Creditor with a goal of negotiating a loan modification. On this understanding the Court granted Creditor's motion for relief.
5. On September 17, 2009, Creditor obtained an Order on its Motion for Relief from stay. In pertinent part, the Order (which incidentally was drafted by Creditor) stated, "**IT IS FURTHER ORDERED, ADJUDGED and DECREED that the [property] subject to the Secured Creditor starting all foreclosure proceedings over with a new Notice of Default**".
6. On or about September 25, 2009, Creditor filed its Notice of Entry of Order of the above Order.
7. On or about October 11, 2009, Creditor, in total disregard to the Court's Order, and agreement with the debtor, mailed the Debtor a Notice of Trustee Sale on the debtor's home located at 4379 Sun Vista Drive, Las Vegas,

Nevada 89104. The sale is noticed to be held on November 4, 2009 at 10:00 AM.

8. Creditor has willfully violated the Court's Order by failing to renoteice a Notice of Default under NRS 107 (as amended through AB 149). This willful failure is sanctionable pursuant to 11 U.S.C. Section 105. See *In re Haque*, 395 B.R. 799 (Bankr. S.D. Fla., Oct. 28, 2008) (where the Court imposed \$95,000 in sanctions under 11 U.S.C. §105).

CONCLUSION

WHEREFORE, Debtor requests that:

1. Creditor be directed to pay reasonable attorney's fees for Creditor's violations and misconduct.
2. Your Honor grant Debtor request actual damages resulting from Creditor's contemptuous conduct.
3. Your Honor grant Debtor's request for punitive damages against and impose \$100,000 in sanctions against Creditor for its contempt of Court.
4. Enjoin Creditor from conducting a sale of the debtor's home on October 20, 2009 at 10:00 AM.
5. In the event Creditor conducts a sale of Debtor's property on October 20, 2009, convert this motion to an adversarial matter governed by FRBP 7001 et seq.
6. For such other and further relief which the Court deems just and proper.

Dated: October 13, 2009

/s/David Krieger, Esq.
David Krieger, Esq.
Attorney for Debtor(s)